UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: PET FOOD PRODUCTS LIABILITY LITIGATION	MDL Docket No. 1850 (All Cases) Civil Action No. 07-2867 (NLH) The Honorable Noel L. Hillman

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, APPROVAL OF PROPOSED FORM OF NOTICE, AND PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

Plaintiffs and Defendants Menu Foods Income Fund, Nestlé Purina PetCare Company, Wal-Mart Stores, PETCO Animal Supplies, Inc., PETCO Animal Supplies Stores, Inc., Kroger Co., Kroger Supermarkets, Inc., Target Corporation, Hill's Pet Nutrition, Inc., The Iams Company, Del Monte Foods, Co., Mars, Incorporated, Nutro Products, Inc., Royal Canin, U.S.A., Inc., ChemNutra Inc., ChemNutra LLC, Wilbur-Ellis Company, PetSmart, Inc. (collectively, "Defendants"), to the above-captioned multidistrict litigation (the "Litigation" or "Action"), having applied pursuant to Fed. R. Civ. P. 23(e) for an order approving the proposed settlement of the Litigation in accordance with the Settlement Agreement entered into on May 21, 2008 (the "Settlement"), and for dismissal of the Litigation upon the terms and conditions provided in the Settlement; the Settlement contemplating certification by this Court of a class solely for settlement purposes; and the Court having considered the Settlement Agreement and all Exhibits thereto; and all Co-Lead Counsel for Plaintiffs and Defendants' Liaison Counsel having consented to the entry of this Order,

NOW, THEREFORE, this 30th day of May, 2008, upon application of the parties, **IT IS HEREBY ORDERED** that:

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~~Having found~~ the proposed settlement is fair, reasonable and adequate and that

1. This Order incorporates herein, and makes a part hereof, the Settlement Agreement, its definitions and its Exhibits thereto. Unless otherwise provided herein, the terms defined in the Settlement Agreement shall have the same meanings herein.

Certification of the Settlement Class

2. The Court preliminarily finds that the proposed Settlement Class meets all of the applicable requirements under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. This Court hereby certifies the following Class for settlement purposes only:

> all persons and entities who purchased, used or obtained, or whose pets used or consumed Recalled Pet Foods Product(s),[1] and excluding Defendants, Released Entities and the *Lum* Class.[2]

The Settlement Class also will exclude those Settlement Class members who have properly opted out of the Settlement Class. Representative Plaintiffs, as set forth in Settlement Agreement,

[1] The Settlement Agreement defines "Recalled Pet Food Product(s)" as "any pet food product and/or treat products or any ingredient thereof that were recalled by any Released Entity between March 16, 2007 and the present because of allegedly contaminated wheat gluten and/or rice protein concentrate and purchased, obtained or used by, or made available to, or intended to be purchased or obtained by Class Members in the United States or Canada, and are the subject of the Pet Food Recall Litigation." Settlement Agreement ¶ I.PP.

[2] As defined in the Settlement Agreement, the "Lum Class" means the settlement class certified and preliminarily approved by the Circuit Court of Hawai'i in the action *Lum v. Menu Foods, Inc., Menu Foods Income Fund, and Menu Foods Holdings, Inc.*, formerly *Ortiz v. Menu Foods, Inc., Menu Foods Income Fund, and Menu Foods Holdings, Inc.*, in the Circuit Court for the State of Hawai'i, Civil No. 07-1-0849-05 (EEH), comprised of all residents of the State of Hawai'i who purchased pet food in the State of Hawai'i that was manufactured by Menu Foods on or between November 8, 2006 and March 7, 2007 and that was recalled on or between March 16, 2007 and the present, excluding (i) Menu Foods, Inc., Menu Foods Income Fund, and Menu Foods Holdings, Inc (collectively, the "Menu Foods *Lum* Defendants"); (ii) the Menu Foods *Lum* Defendants' subsidiaries, parents, and affiliates, including all directors, officers, and employees thereof; (iii) members of the immediate family of any of the foregoing, if natural persons; (iv) the legal representatives, heirs, successors, and assigns of any of the foregoing; (v) any Person in which any of the foregoing has a controlling interest; and (vi) "Deceased Animal Claims" and/or "Injury Claims" and claims of whatever nature asserted by any person with a "Deceased Animal Claim" and/or "Injury Claim," including but not limited to the persons and claims in *Sylvester et al v. Menu Foods, Inc. et al.*, in the Circuit Court for the State of Hawai'i, Civil No. 07-1-0848-05 (as the terms "Deceased Animal Claims" and "Injury Claims" are defined in the *Lum* Settlement Agreement). Settlement Agreement § I.BB.

Section I.O, are conditionally appointed as representatives of the Settlement Class. Entry of this Order is without prejudice to the rights of Defendants to (a) oppose certification in this action, and seek decertification or modification of the Settlement Class as certified, should the settlement not be approved or implemented for any reason; or (b) terminate the Settlement Agreement as provided in the Settlement Agreement.

Settlement Hearing; Right to Appear and Object

3. A hearing on final settlement approval (the "Fairness Hearing") will be held on October 14, 2008 at 9:30 a.m. before the Honorable Noel L. Hillman, United States District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th and Cooper Streets, Room 1050, Camden, New Jersey 08101, to consider, *inter alia*, the following:

(a) determine whether the preliminary certification of the Settlement Class defined herein should be made final;

(b) determine whether the Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class;

(c) determine whether this Court should enter an Order and Final Judgment dismissing with prejudice this Litigation, pursuant to the Settlement Agreement;

(d) determine whether the Court should permanently enjoin the assertion of any Released Claims against any of the Released Entities by members of the Class or any other Releasing Parties;

(e) determine whether Plaintiffs' Lead Counsel's application for attorneys' fees, and reimbursement of expenses should be granted;

(f) hear any objections to the Settlement that may be submitted by Settlement Class members; and

(g) hear any other matters as the Court may deem appropriate.

4. On or before October 3, 2008, Plaintiffs' Lead Counsel shall file with the Court: (i) any memoranda or other materials in support of final approval of the Settlement; and (ii) any application for an award of attorneys' fees and reimbursement of expenses.

5. Any member of the Settlement Class that has not properly filed a request to Opt Out in the manner set forth below may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the Settlement, the dismissal with prejudice of the Litigation, the entry of final judgment, and/or an application for attorneys' fees or reimbursement of expenses, provided, however, that no person shall be heard in opposition to the Settlement, dismissal and/or entry of final judgment or an application for attorneys' fees or reimbursement of expenses, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless submitted to the Court and served upon at least one of Plaintiffs' Lead Counsel and at least one of Defendants' Liaison Counsel. Such person must (a) file with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition and any documentation in support of such opposition, and (b) serve copies of such notice, statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon at least one of Plaintiffs' Lead Counsel and at least one of Defendants' Liaison Counsel on or before September 12, 2008 ~~**[Objection Date – 30 days before Final Fairness Hearing]**~~. Persons who fail to object in the manner and by the dates provided herein shall be deemed to have waived and shall forever be foreclosed from raising any such objections.

6. Counsel for the Parties entitled to service of documentation described above are

as follows:

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7. The date and time of the Fairness Hearing shall be set forth in the Notice, but shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted at the Court, on the Court's website, and/or the settlement website.

8. The Court reserves the right to approve the Settlement at or after the Fairness Hearing with such modification(s) as may be consented to by the parties to the Settlement Agreement and without further notice to the Settlement Class and Defendants.

Form and Timing of Notice

On or before June 16, 2008

9. ~~Within fifteen (15) days after the date of this Order~~ ("Notice Date"), the proposed Notice Plan provided in the Settlement Agreement and proposed Notices attached as Exhibits 3 and 3A thereto, shall commence and be disseminated by direct mail and publication and through veterinarians as follows:

a. Notice by Direct Mail: The Claims Administrator shall cause notice to be disseminated by direct mail to (1) all persons who were paid as part of a Historic Payment program,[3] ~~and~~, (2) all persons who completed and returned a claim form to Crawford & Company and whose names and addresses are in a readily accessible database maintained by Crawford & Company, and (3) all persons who were the subject of the Court's Order to Show Cause dated April 28, 2007. Defendants and Crawford & Company shall provide the Claims Administrator on a confidential basis the names and address of all such persons.

b. Notice By Publication: Class Notice shall be published according to the Notice Plan in newspapers, periodicals, or other sources, including media distributed electronically on or before the Notice Date. All other Notices contemplated by the Settlement Agreement shall also be made by publication and direct mail.

c. Notice to Veterinarians: Class Notice shall be provided to national veterinary organizations including the American Veterinarian Medical Association and the Canadian Veterinary Medical Association for further dissemination at their option to their members and veterinarians.

10. Menu Foods and/or Crawford & Company are hereby authorized to provide to the Claims Administrator the names and addresses of all persons who returned a claim form to

[3] "Historic Payments" mean those amounts already paid to Settlement Class Members by certain of the Defendants, Released Entities and/or their insurers in settlement or reimbursement of Claims for certain injury, death or screening expenses associated with a pet's consumption of Recalled Pet Food Products, which Defendants represent to equal at least $8,000,000. Settlement Agreement, ¶ II.Z.

Crawford & Company related to the Recall, and whose names and addresses are in a readily accessible database maintained by Crawford & Company. Further, upon the request of the Claims Administrator, Crawford & Company is authorized to provide to the Claims Administrator on a confidential basis the completed claim form and accompanying documentation submitted therewith by any individual to Crawford & Company related to the Recall.

11. The costs of preparing, printing, publishing, mailing and otherwise disseminating the notice shall be paid from the class Settlement Fund in accordance with the applicable provisions of the Settlement.

12. The Court finds that the forms and manner of notice as set forth in paragraphs 7 through 9 and approved herein meet the requirements of due process under Fed. R. Civ. P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional due process requirements of notice. The Court approves the Notice Plan in all respects and Orders that notice be given in substantial conformity therewith.

13. The Court appoints Hefler, Radetich & Saitta LLP as the Claims Administrator. Responsibilities of the Claims Administrator include the following: (a) disseminating notice to the Settlement Class; (b) certify to the Court that notice was published; (c) certify the dates that notices to the Settlement Class were actually published by each newspaper, periodical, or other sources, provide a true copy of each notice in each publication, and provide any other information relevant to the publication and mailing of the notice; (d) establishing a website for purposes of posting the notice, Settlement Agreement and related documents; (d) accepting and maintaining documents sent from Settlement Class members, including claim forms, requests to

Opt Out and other documents relating to claims administration; (e) administering claims for the payments from the Settlement Fund to Settlement Class members, in accordance with the terms of the Settlement Agreement; and (f) all other responsibilities designated to the Claims Administrator in the Settlement Agreement.

Ability of Settlement Class members to Opt-Out of Settlement Agreement

14. Any member of the Settlement Class who wishes to be excluded from the Settlement Class shall mail a written request to Opt Out to the Claims Administrator, to be received no later than August 15, 2008 ~~sixty (60) days after notice is disseminated~~ (the **Opt Out Deadline**), and shall clearly state the following: the name, address, telephone number and signature of the individual or entity that wishes to be excluded from the Settlement Class.

15. Settlement Class members that submit valid, timely, and complete requests to Opt Out shall not be bound by the Settlement Agreement or the Final Order and Judgment.

16. The initial determination that each request to Opt Out by a Class Member complies with the Opt Out procedures in the Settlement Agreement will be made by the Claims Administrator and is subject to final approval by the Court, as part of the Final Approval of the Settlement Agreement. The Court may disallow any request for exclusion that fails to comply with the provisions of Preliminary Approval Order or the Opt Out procedures otherwise approved by the Court.

17. Any member of the Settlement Class that does not timely mail a valid request to Opt Out as set forth in paragraph 12 above shall be automatically included in the Settlement Class and if the Settlement is approved, shall be bound by all the terms and provisions of the Settlement Agreement, including but not limited to the releases, waivers, and covenants not to sue described therein, whether or not such member of the Settlement Class shall have objected to

the Settlement and whether or not such a member of the Settlement Class makes a claim upon or participates in the Settlement Fund.

Other Provisions

18. All proceedings in this Litigation, except matters related to retention of Recalled Pet Food Products, raw wheat gluten, organized inventory and uninventoried or inventoried product, and any other matters necessary to implement, advance, or further the Settlement Agreement or settlement process, are hereby stayed and suspended until further order of this Court.

19. No discovery with regard to the Settlement or Settlement Agreement shall be permitted as to any of the parties to the Settlement Agreement other than as may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with the applicable rules of this Court.

20. This Order bars and enjoins all Settlement Class members from commencing or prosecuting any action asserting any Released Claims, and stays any actions or proceedings brought by any member of the Settlement Class asserting any Released Claims as of fifteen (15) days after the date of this Order.

21. Pending Final Approval, no Settlement Class Member, either directly, representatively, or in any other capacity, shall file, commence, prosecute or continue against any or all of the Released Parties, any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released upon Final Approval pursuant to the Settlement Agreement, and are hereby enjoined from so proceeding. Upon Final Approval, all Settlement Class members except those persons found by this Court to have validly excluded themselves from the settlement shall be forever enjoined and barred from (i) filing, commencing,

prosecuting, continuing, maintaining, intervening in, participating in (as class members or otherwise) or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding or order in any jurisdiction based on any or all Released Claims against one or more Released Entities or against any person or entity who may claim over against any Released Entity for contribution or indemnity; (ii) instituting, continuing, maintaining, organizing class members in, or joining with class members in, any action or arbitration, including but not limited to a purported class action, in any jurisdiction, against one or more Released Entities, or against any person or entity who may claim over against any Released Entity for contribution or indemnity, based on, involving, or incorporating, directly or indirectly, any or all Released Claims; and (iii) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise) or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding, or order in any jurisdiction based on an allegation that an action taken by the Released Entities, which is in compliance with the provisions of the Settlement Agreement, violates any legal right of any Settlement Class Member.

22. Any information received by the Claims Administrator in connection with this Settlement that pertains to a particular member of the Settlement Class shall be confidential and shall not be disclosed by the Claims Administrator to any other Settlement Class Member.

23. Upon Final Approval, each and every term and provision of the Settlement Agreement (except as modified by the Final Approval Order) shall be deemed incorporated into the Final Order and Judgment as if expressly set forth and shall have the full force and effect of an Order of the Court.

24. In the event the Settlement is terminated in accordance with the provisions of the Settlement Agreement, the Settlement and all proceedings had in connection therewith, including

the certification of the Settlement Class and appointment of class representatives for settlement purposes only, shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the *status quo ante* rights of Parties and Released Entities. Neither this Order nor the Settlement Agreement, nor any negotiations, statements, communications or proceedings in connection therewith, shall be offered or received as, construed as, or be deemed to constitute any evidence of, an admission or concession by any Released Entity of any liability or wrongdoing by them, or that the claims and defenses that have been asserted in the Litigation. The certification of the Settlement Class shall not be treated as the adjudication of any fact or issue for any purpose other than this Settlement Agreement and shall not be considered as law of the case, res judicata, or collateral estoppel in any other proceeding. Until and unless the Settlement Agreement reaches the Effective Date, the certification of the Settlement Class shall not be treated as the adjudication of any fact or issue and shall not be considered as law of the case, res judicata, or collateral estoppel in this proceeding, the certification of the Settlement Class shall not be treated as the adjudication of any fact or issue and shall not be considered as law of the case, res judicata, or collateral estoppel in this proceeding.

25. Defendants may communicate with putative Class Members regarding the provisions of this Agreement, so long as such communications are not inconsistent with Class Notice or other agreed upon communications concerning the Agreement. The Released Entities may refer potential Class Members to the Claims Administrator, the toll free number and the settlement web site. Defendants will not discourage the filing of any claims allowed under Section V of the Settlement Agreement. Released Entities that have been reimbursing potential Class Members may continue to do so if necessary to complete claims and Released Entities also

may encourage those persons to participate in the class settlement that is the subject of the Settlement Agreement. In addition, Defendants may continue to communicate with their customers, business contacts, and members of the public in the ordinary course of business without need to submit the communication.

SO ORDERED this 30th day of May, 2008.

Noel L. Hillman

Noel L. Hillman
United States District Judge

At Camden, New Jersey